

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

STEFAN PASSANTINO,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 4:23-CV-00300-ELR

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR JUDICIAL NOTICE**

Plaintiff, Stefan Passantino, respectfully moves this Court to take judicial notice of an interim report from the United States House of Representatives Committee on House Administration concerning text messages between then-Representative Liz Cheney and multiple individuals relating directly to issues pending before this Court, including the Motion for Default Judgement and the United States Motion for Judgment on the Pleadings. Dkt. No. 35, 27. The interim report contains details of text messages between Representative Cheney, acting as an agent of the United States, engaging in a conspiracy to invade Mr. Passantino's privacy by backchanneling with his client, Ms. Hutchinson, and a third party to Ms. Hutchinson. It is, therefore, subject to judicial notice in consideration of these pending motions.

ARGUMENT

I. Judicial Notice is proper.

There are several pending motions before this Court due to the unusual posture of this case. Yet, pursuant to Federal Rule of Evidence 201(d), judicial notice is proper “at *any* stage of the proceeding.” (emphasis added). Under Rule 201, a court may take judicial notice of any adjudicative fact “that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201.

The interim report, released on October 15, 2024, by a subcommittee of the United States House of Representatives, provides an update on a comprehensive and ongoing investigation by a subcommittee of the United States House of Representatives.¹ This investigation has already released an

¹ See United States House of Representatives House Administration Subcommittee on Oversight, New Texts Reveal Liz Cheney Communicated with Cassidy Hutchinson About Her Select Committee Testimony—without Hutchinson’s Attorney’s Knowledge—Despite Cheney Knowing it was Unethical (Oct. 15, 2024), available at: <https://cha.house.gov/press-releases?ID=46BC1893-41CA-4E6B-834C-2B2B2A6BDB70>.

initial findings report.² There is no question as to its authenticity on a government website.³

Multiple district courts, including this Court, have found it appropriate to take judicial notice of government publications and website materials. *See e.g., In re Towne Servs., Inc. Sec. Litig.*, 184 F. Supp. 2d 1308, 1313 (N.D. Ga. 2001) (taking judicial notice of SEC documents); *Coastal Wellness Centers, Inc. v. Progressive American Ins. Co.*, 309 F. Supp. 3d 1216, 1220 n.4 (S.D. Fla. 2018) (“The Court may take judicial notice of government publications and website materials.”); *Abdus-Sabur v. Hope Village, Inc.*, 221 F. Supp. 3d 3, 9–

² *See* United States House of Representatives House Administration Subcommittee on Oversight, Initial Findings Report on the failures and politicization of the January 6th select committee and the activities on and leading up to January 6, 2021 (Mar. 11, 2024), available at: <https://cha.house.gov/cache/files/d/9/d96ba6ce-03fb-4fc8-a4a7-5b5daf19d064/4F510144C1F427873D3298D955C8E19F.initial-findings-report.pdf>.

³ In addition, there have been multiple other sources of this information that may not be judicially noticeable at this time but will likely result in noticeable determinations at some point. At least one organization has filed a bar complaint against Representative Cheney for her conduct at issue in this matter and the interim report. *See* America First Legal, America First Legal Files Bar Complaint on Behalf of Stefan Passantino Against Former Congresswoman Liz Cheney for Secret Communications With J6 Committee Witness Cassidy Hutchinson (Oct. 22, 2024), available at: <https://aflegal.org/america-first-legal-files-bar-complaint-on-behalf-of-stefan-passantino-against-former-congresswoman-liz-cheney-for-secret-communications-with-j6-committee-witness-cassidy-hutchinson/>.

10 & n.3 (D.D.C. 2016) (taking judicial notice of Medicare manual and government healthcare website); *United States ex rel. Fox RX, Inc. v. Omnicare, Inc.*, 38 F. Supp. 3d 398, 405–06 & n.6 (S.D.N.Y. 2014) (taking judicial notice of CMS website). In addition, this Court has found that it is acceptable to take judicial notice of documents such as press releases. *See In re Towne Servs., Inc. Sec. Litig.*, 184 F. Supp. 2d 1308, 1313 (N.D. Ga. 2001) (taking notice of press releases where there is no concern over authenticity); *see also Buckley v. DIRECTV, Inc.*, 276 F. Supp. 2d 1271, 1272 (N.D. Ga. 2003) (“The Court grants the parties’ requests that the Court take judicial notice of a Department of Justice press release and two recent court decisions in related cases.”)

Moreover, with respect to agency reports, which are akin to the reports of the House Administration Committee and the interim report about its investigation, the Eleventh Circuit has found judicial notice can be proper: “Absent some reason for mistrust, courts have not hesitated to take judicial notice of agency records and reports.” *K.T. v. Royal Caribbean Cruises, Ltd.*, 931 F.3d 1041, 1047–48 (11th Cir. 2019) (Carnes, C.J., concurring) (citing *Terrebonne v. Blackburn*, 646 F.2d 997, 1000 n.4 (5th Cir. 1981)). The District Court for the District of Columbia also recently took judicial notice with respect to the Final Report of the Select Committee to Investigate the January 6th

Attack on the United States Capitol (“January 6 Report”). *See United States v. MacAndrew*, 2023 WL 196132, at *2 n.1 (D.D.C. Jan. 17, 2023).

More importantly, however, the rules of evidence and Eleventh Circuit caselaw demonstrate judicial notice is appropriate. *See* Fed. R. Evid. 201(d); *Royal Caribbean Cruises*, 931 F.3d 1041, 1047–48 (Carnes, C.J., concurring); *Coney v. Smith*, 738 F.2d 1199, 1200 (11th Cir. 1984); *Rothenberg v. Sec. Mgmt. Co., Inc.*, 667 F.2d 958, 960 (11th Cir. 1982).

This interim report demonstrates tangible evidence that this Court may consider in support of the Motion for Default Judgment as it evinces the conspiracy detailed in Plaintiff’s Complaint.⁴ Moreover, in considering the Motion for Judgment on the Pleadings filed by the United States, this provides direct evidence supporting the theory outlined in the Complaint—that agents of the January 6 Committee undertook to invade Mr. Passantino’s privacy, not to defame him, but to expose intimate details of his representation of Ms. Hutchinson and thereby create damage. Specifically, while Mr. Passantino was actively representing Ms. Hutchinson, text messages show that an agent of the

⁴ *See also* Oversight Subcommittee (@OversightAdmn), X (Oct. 24, 2024, at 10:52 A.M.), <https://x.com/OversightAdmn/status/1849464073995325506> (“NEW texts show Alyssa Farah Griffin pressured Cassidy Hutchinson to help the J6 Select Committee”).

January 6th Committee was in contact with Ms. Hutchinson, discussing her attorney client relationship with Mr. Passantino.

Whether this Court decides to take notice of the contents of the documents for the facts contained therein, notice of the documents themselves plainly demonstrates the existence of facts that would be discoverable in this case. This would be discoverable through the normal course of discovery and the use of subpoenas and requests for production and bolsters Plaintiff's request for a hearing on the pending Default Judgment issue.

CONCLUSION

Plaintiff, Stefan Passantino, respectfully requests this Court take judicial notice of the interim report in its consideration of the motions pending before this Court.

Dated: November 14, 2024

Respectfully submitted,

/s/ Jesse R. Binnall
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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing motion was prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Jesse R. Binnall
Jesse R. Binnall (*pro hac vice*)

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on November 14, 2024, a copy of the foregoing was filed with the Clerk of the Court using the Court's CM/ECF system, which will send a copy to all counsel of record.

/s/ Jesse R. Binnall
Jesse R. Binnall (*pro hac vice*)

Attorney for Plaintiff